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OCT 30 1997

KENNETH G. LEE
COUNSEL

October 30, 1997

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: In the Matter of: Preemption of State and Local Zoning and Land Use
Restrictions on the Siting, Placement and Construction of Broadcast Station
Transmission Facilities
MM Docket No. 97-182

Dear Secretary:

Attached please find an original and four copies of comments to the above-referenced NPRM. We are Counsel to the Regional Airport Authority of Louisville and Jefferson County, Kentucky, and submit these comments on its behalf.

If you have any questions regarding these comments please contact Mr. T. Kennedy Helm, III, at 502-681-0449 or Mr. Timothy W. Bratcher at 502-681-0438.

Very truly yours,

STITES & HARBISON



Kenneth G. Lee

Attachments

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Preemption of State and Local
Zoning and Land Use Restrictions
on the Siting, Placement and
Construction of Broadcast
Station Transmission Facilities

MM Docket No. 97-182

**COMMENTS OF REGIONAL AIRPORT AUTHORITY OF
LOUISVILLE AND JEFFERSON COUNTY, KENTUCKY**

The Regional Airport Authority of Louisville and Jefferson County, Kentucky (the "Authority"), hereby submits its comments on the Notice of Proposed Rule Making ("NPRM") released by the Federal Communications Commission (the "Commission") on August 19, 1997.¹

STATEMENT OF INTEREST

The Regional Airport Authority of Louisville and Jefferson County, Kentucky (the "Authority"), a body politic and corporate, is owner and operator of Louisville International Airport ("LIA") and Bowman Field, both of which are located within Jefferson

¹In re Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities, FCC 97-296, MM Docket No. 97-182 (Notice of Proposed Rule Making rel. Aug. 19, 1997) (the "NPRM").

County, Kentucky. Regulatory control of objects affecting air navigation within and around LIA and Bowman Field is vested in the Kentucky Airport Zoning Commission ("KAZC"), an administrative agency created by the Kentucky General Assembly. Although KAZC's jurisdictional area has been limited by judicial decision to those areas "within and around publicly-owned airports," the Authority nonetheless relies on KAZC to regulate those objects which may affect air navigation in the vicinity of its airports. See Cosmos Broadcasting Corp. v. Commonwealth, 759 S.W.2d 824, 826 (Ky. Ct. App. 1988). As the Authority has witnessed a significant increase in the number of flights arriving and departing from LIA, the Authority's concerns over such objects have become more acute. KAZC, as a state-level entity, has remained accessible to the Authority and responsive to its concerns; preempting KAZC's regulatory powers as contemplated in the Petitioners' proposed rule (the "Proposed Rule") would adversely affect the Authority and would not be in the best interests of its patrons or the citizens of this Commonwealth.

DISCUSSION

Navigable airspace within and around the Authority's airports is regulated by KAZC, an agency devoted to regulating airport zoning within its jurisdictional limits. As with other agencies,

KAZC refers to the regulations and policies promulgated by the Federal Aviation Administration (the "FAA") when implementing and carrying out its regulations on the construction and alteration of objects that may affect air navigation. Generally, FAA regulations require that persons who intend to construct or modify such objects must give notice to the FAA. But the FAA does not have the authority to prevent the construction or alteration of such objects; the Congress has left such power exclusively in the hands of state and local governments.

In the exercise of this important public safety responsibility, the Kentucky General Assembly established KAZC. As a state-level agency, KAZC has intimate knowledge of the unique conditions existing within this state and around its publicly-owned airports and has adopted regulations and procedures based on that knowledge. No distant, federal agency not constituted to regulate air navigation could ever provide the responsive, accessible services KAZC currently provides to the citizens of this Commonwealth.

KAZC's administrative role is even more important in this era of ever-increasing air traffic. The Authority has recently opened a new runway (and will open a second new parallel runway in the coming months). Over the past four years, the number of daily

commercial flights at LIA has increased from sixty-nine to ninety-one. KAZC, with its knowledge of LIA, is indispensable to the protection of existing and anticipated approach and departure procedures from LIA and Bowman Field. Any preemption of KAZC's authority to regulate objects affecting navigable airspace in and around LIA would have a detrimental effect on the safety of air travel here in Kentucky. Such preemption would rob the Authority of a responsive, informed agency capable of, and empowered to, regulate those objects which pose a threat.

The Proposed Rule would require KAZC to respond to applications to construct, relocate, or modify broadcast facilities within twenty-one to forty-five days. If KAZC does not respond in such time, the application would be deemed approved. This portion of the Proposed Rule fails to take into account the complexity of determining the effects a proposed construction may have on air safety, and requiring KAZC to resolve such complex matters in such short time approaches recklessness. Deeming an application approved may be disgruntling as far as aesthetic or economic considerations are concerned, but it could be deadly if the facility poses a threat to air safety.

The Authority also submits that the Petitioners' Proposed Rule is overly broad in that it seeks preemption for all broadcast

facilities even though the current task is the implementation of digital television ("DTV"). Certainly, the number of radio and analog television broadcast facilities currently existing is proof enough that local regulations have not substantially interfered with the proliferation of such facilities and that local zoning agencies and broadcasters can exist harmoniously. Nonetheless, Petitioners are urging the Commission to eliminate the existing regulatory scheme which has at once allowed the proliferation of broadcast facilities and provided for the safety of air travel.

The only justifications Petitioners have offered for their Proposed Rule is the Congress's policy of spectrum recovery and the Commission's own "accelerated schedule for construction of DTV transmission facilities"² Congress's spectrum recovery policy contains no time limits, which leads the Authority to believe that Congress did not intend the implementation of DTV to be to the detriment of air safety. Indeed, one need only compare the consequences of failing to implement DTV in accordance with the Commission's ambitious deadline to the consequences of preempting local, informed zoning of objects affecting air safety to see where the equities in this matter should lie. Clearly, the balance tips

²NPRM para. 2.

in favor of keeping intact the existing regulatory scheme which, historically, has simultaneously allowed the proliferation of broadcast facilities and provided for the safety of air travel.

For the foregoing reasons, the Commission should not adopt the Proposed Rule. In the alternative, the Proposed Rule should specifically provide an exception that local zoning regulations and procedures would not be preempted in those instances in which a proposed construction implicates the regulation of navigable air space in and around publicly-owned airports. Adopting such an exception would allow KAZC to continue its vital function of protecting navigable airspace within its limited jurisdiction and would have only a limited impact on the roll-out of DTV.

These comments are respectfully submitted on behalf of the Regional Airport Authority of Louisville and Jefferson County, Kentucky, by Stites & Harbison, 400 West Market Street, Louisville, Kentucky 40202, in its capacity as Counsel to the Authority. The contact person at Stites & Harbison is T. Kennedy Helm, III, who can be reached at 502-587-3400.

Date: October 30, 1997